

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

In re:

MOTION TO QUASH SUBPOENA

Miscellaneous Case No. 22-mc-00008-RM

JOINT MOTION TO EXTEND STAY OF PROCEEDINGS

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, D.C.COLO.LCivR 6.1, and RM Practice Standard (Civil) IV.K, Amazon.com, Inc. and Amazon Data Services, Inc. (together, “Amazon”) and Rodney Atherton (“Mr. Atherton”) (all together, “the Parties”) hereby move for an extension of the current stay of this proceeding to quash a non-party subpoena. In support hereof, the Parties state:

1. The subpoena at issue in this proceeding relates to a civil case pending in the Eastern District of Virginia. *See* ECF No. 1-2.
2. Mr. Atherton moved to quash the subpoena at issue in this proceeding on January 13, 2022. ECF No. 1.
3. Shortly thereafter, the Parties moved for a temporary stay of this proceeding, ECF No. 4, which the Court granted on February 3, 2022, ECF No. 5.
4. Pursuant to the Court’s February 3 order, Amazon’s response to Mr. Atherton’s motion to quash is due February 16, 2022. *Id.* Mr. Atherton’s reply is due seven days after Amazon files its response. *Id.*
5. Amazon has now filed a motion under Rule 45(f) of the Federal Rules of Civil Procedure to transfer Mr. Atherton’s motion to quash to the Eastern District of Virginia. ECF No. 7. Mr.

Atherton consents to, and joins, this motion to extend the current stay in this Court pending resolution of the transfer motion.

6. The Court has broad discretion ““to stay proceedings pending before it and to control its docket for the purpose of economy of time and effort for itself, for counsel, and for litigants.”” *Baca v. Berry*, 806 F.3d 1262, 1269–70 (10th Cir. 2015) (quoting *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963)). Courts in this district have granted temporary stays of proceedings where, as here, “a resolution of the pending motion may result in the transfer of th[e] matter in its entirety” or otherwise dispose of the action. *Anza Tech., Inc. v. Xilinx, Inc.*, 2017 WL 10379350, at *2 (D. Colo. Oct. 16, 2017); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Coors*, 357 F. Supp. 2d 1277, 1280 (D. Colo. 2004); *Love Hobby, Inc. v. Flashcopter LLC*, 2016 WL 11693689, at *2 (D. Colo. Aug. 22, 2016).

7. The Parties have agreed that a further stay of the proceedings is the most efficient course of action while Amazon’s motion to transfer remains pending. If the Court grants Amazon’s motion and transfers Mr. Atherton’s motion to the Eastern District of Virginia, then the transfer order will obviate the need for any further briefing or expenditure of judicial resources in this Court. Conversely, if the Court denies the transfer motion, the Parties will have the benefit of a forum ruling before engaging in further briefing. In either case, resolution of the transfer motion will help avoid needlessly duplicative litigation, and will assist the Parties’ efforts to distill and focus their arguments as to the merits of the privilege issues that Mr. Atherton and his clients have raised. Accordingly, a further stay of this proceeding would serve the interests of efficiency and judicial economy.

WHEREFORE, the Parties respectfully request that this Court issue an order further extending the existing stay of this proceeding until such time as Amazon's motion to transfer is resolved. In the event that the Court denies Amazon's transfer motion, the Parties further request that the deadline for Amazon's response to Mr. Atherton's motion to quash be set for seven days after the entry of the Court's order resolving the motion to transfer, with Mr. Atherton's reply to follow seven days thereafter. In the event that the Court grants Amazon's motion to transfer, no further deadlines will be necessary.

Dated: February 14, 2022

Respectfully submitted,

/s John S. Zakhem

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2022, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

/s/ Amanda J. Sterling

Amanda J. Sterling